

LABOUR DEPARTMENT

The 27th September, 1994.

No. 14/13/87-6 Lab./579.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s. Tryshoera India (P) Ltd., Faridabad *versus* Ved Ram I.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 144/92.

Between

THE MANAGEMENT OF M/S. TRYSHOERA INDIA (P) LTD., PLOT NO. 32, SECTOR-6,
FARIDABAD

versus

THE WORKMAN NAMELY SHRI VED RAM I, C/O HIND MAZDOOR SABHA, SAHID CHOWK,
FARIDABAD

Present:—

Shri B. L. Gupta, A.R. for the workman.

None for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication, *vide* Haryana Government, Endst. No. 10280—85, dated 24th February, 1992:—

Whether the termination of services of Shri Ved Ram I is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed with the management on 5th March 1983 and his last drawn wages were Rs. 944-50. He had not provided any cause of complaint regarding his work to the management. On 26th April, 1991 the management had issued notice that factory had been closed due to non-cooperation of the workmen and the services of all the workmen stood terminated. This was done by the management as the union of the factory had given a joint demand notice dated 26th February, 1991. The management had started getting the work done from the contractors. On the other side pressure was put on the union for settlement as was done earlier in the year 1989. The management also got the matter settled with certain workmen through settlement under Section 12(3) of the Act. The management had been running the factory with the help of the contractors and as such the complaint was made to the Labour Inspector. The Labour Inspector inspected the Factory and had found the contractor working for the management. Thus, the termination of services of the workman effected by the management in the garb of closure of the factory is illegal, against the provisions of the Act and violative of rules of natural justice. Consequently, the workman is entitled to be reinstated into service with continuity of service and with full back wages.

3. The management appeared and submitted written statement, dated 27th July, 1992, stating therein that the Government had made a reference without applying its mind. The factory had been closed with effect from 26th April, 1991 and all the employees were accordingly removed from services. The factory had been closed due to shortage of orders and financial crises. Moreover the Management had to vacate the rented premises to obey the order of Hon'ble High Court. All the workers had collected full and final dues before the Labour-cum-Conciliation Officer, Sector-7, Faridabad. The workman has raised the dispute just to blackmail the management and as such the workman is not entitled to any relief.

4. The workman submitted rejoinder, dated 24th November, 1992, re-asserting the previous over-ments and denying the overments of the management.

5. On the pleadings of the parties, the following issues were framed :

1. Whether the reference is not maintainable in view of preliminary objection ?

2. As per terms of reference.

6. The management sought several adjournments to lead evidence. On 4th March, 1994 non-appeared on behalf of the management and it was thus, ordered that the management be proceeded against *ex parte*

7. The workman has examined himself on oath and has stated facts mentioned above.

8. I have heard Shri B. L. Gupta, authorised representative of the workman and have also gone through the evidence on record. My findings on the aforesaid issues are as under:—

9. Issue No. 1:

There is no evidence from the side of the management to prove the contention of the basis of which this issue was framed. Consequently, Issue No. 1 is decided against the management and in favour of the workman.

10. Issue No. 2:

The workman has stated on oath that he was employed by the management as Escaver Opeator with effect from 5th March, 1983 and had worked upto 26th April, 1991. It is thus, clear that the workman had rendered service for a continuous period of more than 240 days preceeding on the date of termination of his services. The management has not led any evidence to show that the factory was closed as per law and the workman was offered compensation required to be paid to him. The management has also not led any evidence to prove that the workman had settled his claim with the management. Keeping in view this position, the termination of services of the workman by the management is illegal and unjustified. Consequently, he is entitled to be reinstated into service with full back wages and continuity in service. Issue No. 2 is decided against the management and in favour of the workman.

11. For the reasons recorded above, it is held that the termination of services of the workman by the management is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service and full back wages. The award is passed accordingly.

U. B. KHANDUJA,

The 12th August, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endst. No. 2800, dated 31st August, 1994.

A copy with three spare copies is forwarded to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6 Lab./590.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to published the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Kumar Video Talkies, Palwal *versus* Balbir.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Ref. No. 294/89

between

THE MANAGEMENT OF M/S KUMAR VIDEO TALKIES, MATHURA ROAD,
NEAR MATHURA CHUNGI, PALWAL

versus

THE WORKMAN NAMELY SHRI BALBIR C/O SHRI MANOHAR LAL, SANCHURI
EMPLOYEES, INTAK TRADE UNION REGD., 2A/118, FARIDABAD.

Present :

None.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act'), the Governor of Haryana referred the following dispute, between the parties mentioned above to this court for adjudication,—vide Haryana Government Endorsement No. 24038—43, dated 7th June, 1989 :—

Whether the termination of services of Sh. Balbir is legal and justified? If not, to what relief, is he entitled to?

2. Notice were sent to both the parties for appearing in the Court. The workman appeared through his authorised representative Shri Panchanand. Three notices sent to the management under registered cover were received back with the reports that the premises of the factory were lying closed. On receipt of this case by transfer to this court. Several notices were sent to the workman under ordinary post but the workman did not appear. Then notice under registered cover was sent to him for appearance in the court today but he not turned up. It appears that the workman is not interested to pursue his case. Consequently, the court is left with no option but to pass no claim award and it is passed accordingly.

U. B. KHANDUJA,

The 6th September, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2845, dated the 9th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6 Lab./593.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of The Executive Engineer, P.W.D. (B. & R.), Gurgaon, versus Om Parkash.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 184/91.

Between

• THE MANAGEMENT OF M/S. THE EXECUTIVE ENGINEER, PROVINCIAL DIVISION, P.W.D.
(B. & R.), GURGAON

2. SUB-DIVISIONAL ENGINEER, PROVINCIAL SUR-DIVISIONAL, P.W.D., (B. & R.),
BALLABGARH

Versus

THE WORKMAN NAMELY: SHRI OM PARKASH, C/O SHRI B. M. GUPTA, E-74, DABUA
COLONY, N. I. T., FARIDABAD

Present:

Shri B.M. Gupta, AR, for the workman.

Shri N. M. Sharma, A.D.A., for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana, referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endst. No. 23794—800, dated 2nd July, 1991:—

Whether the termination of services of Shri Om Parkash is legal and justified. If not, to what relief, is he entitled to ?

2. The case of the workman is that he was appointed on 1st February, 1985 as Chowkidar by respondent No. 2. He had been working to the satisfaction of his officer till 12th March, 1991. His services were illegally terminated with effect from 14th March, 1993 without complying with the provision of section 25-F of the Act. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No. 1 submitted written statement stating therein that P.W.D., (B. & R.), department is not an industry and as such the provisions of the Act are not applicable to the department. The workman was engaged as temporary muster-roll as daily wage holder with effect from October, 1987, instead of 1st February, 1985 as alleged by the workman. He was paid daily wages at the rate fixed by the Government from time to time. He was not engaged when he became surplus. Moreover, as per chapter No. 1 rule No. 4 of P.W.D. specifications of 1987 the sub-Divisional Engineer or Junior Engineer or Incharge can remove any workman employed on daily wages without assigning any reason. That being so, the action of the respondents is legal and valid.

4. The workman submitted rejoinder dated 18th November, 1992, re-asserting the previous overments and denying the overments of the respondent No. 1.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the respondent management is not an industry ? O.P.M.

(2) Whether the termination of services of Shri Om Parkash is legal and justified. If not, to what relief, is he entitled ? (As per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under:—

Issue No. 1:

8. It was held by the Hon'ble supreme Court of India in the case of *Des Raj, versus State of Punjab*, A.I.R., 1988 S.C., 1182, that the Irrigation branch of Public Works Department comes within the ambit of the terms industry as defined in Section 2(J) of the Act. The authorised representative of the respondent has conceded that the ratio of this case squarely applies on the facts of the instant case. It is thus concluded that the department of the respondents is covered by the term 'Industry' as defined in Section 2(J) of the Act. Issue No. 1 is decided against the respondents and in favour of the workman.

Issue No. 2:

9. The respondent have examined one witness namely A. K. Kataria Sub-Divisional Engineer. He deposed that the workman was kept on daily wages basis at the rate of 19.25 per day in October, 1987. He was not issued any appointment letter. He had worked for 150½ days during the period from October, 1987 to March, 1987. He had worked for 321 days during the period from April, 1988 to March, 1989. Similarly he had worked for 306 days during the period from April, 1989 to March, 1990 and for 282 days April, 1990 to January, 1990. He also placed on record a copy of instructions issued by the Haryana Government, dated 27th May, 1993 Ex. M-1 and copy of muster rolls for the relevant period Ex. M-2. On the basis of this statement, it has been submitted on behalf of the respondents that the services of the workman who was employed on daily wages were properly terminated without assigning any reason as per provision of Chapter I, rule 1.4 of the P.W.D. specifications. Apart from this, the action taken by the respondents is according to the instructions issued by the Haryana Government and as such it is legal and valid. Consequently, the workman is not entitled to any relief.

10. On the other hand, the workman deposed facts mentioned above in his claim statement. It has been contended by the authorised representative of the workman that it is not disputed that the workman had rendered service continuously for a period of more than 240 days before the termination of his service. It is also not disputed that the workman was not paid retrenchment compensation envisaged under

section 25-F of the Act. The impugned action of the respondent is thus, illegal being violative of the provision of section 25-F of the act. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages.

11. It was held in the case of Govind Singh, *versus* Presiding Officer, U.P. Agra and another, 1993 (1) LLR 142 that the services of a daily wages worker who had completed 240 days work with in period of 12 months immediately proceeding the date of termination without paying to him retrenchment compensation or following the procedure under law would be void and the workman shall be entitled to claim not only reinstatement but also declaration for continuing in service with back wages. This position is based on the provision of Section 25-F of the Act. The instructions contained in the P.W.D. specifications can not be given over riding effects as compared to the provision of Industrial Disputes Act. Similarly is the position with regard to the instructions issued by the Haryana Government referred to above. It is not disputed that the workman had rendered service for a continued period of more than 240 days before the termination of his services. It is also not disputed that the workman was not paid retrenchment compensation. The termination of services of the workman is by the respondent in the manner referred to above is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service and full back wages. The award is passed accordingly.

U. B. KHANDUJA,

The 3rd September, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endst. No. 2864, dated 15th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner, and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No 14/13/87-6 Lab. /594.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad, in respect of the dispute between the workman and the management of M/s. The Executive Officer-cum-Secretary, Market Committee, Hodel, *versus* Pal Singh.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 118/88

between

THE MANAGEMENT OF M/S. EXECUTIVE OFFICER-CUM-SECRETARY, MARKET COMMITTEE,
HODEL, DISTRICT FARIDABAD

2. CHIEF ADMINISTRATOR, HARYANA STATE AGRICULTURE MARKETING
BOARD, SECTOR-6, PANCHKULA

versus

THE WORKMAN NAMELY SHRI PAL SINGH, C/O SHRI K. L. SHARMA, G-15, OLD PRESS
COLONY, FARIDABAD

Present:

Shri K. L. Sharma, A.R., for the workman.

Shri Vinod Goyal, A.R. for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act'), the Governor of Haryana, referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endst. No. 21801—807, dated 20th May, 1988:—

Whether the termination of services of Shri Pal Singh is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he had been serving with respondent No. 1 as Jeep driver at Hodel since 27 March, 1986. On 3rd December, 1987, his services were abruptly terminated without assigning any valid reason and without complying with the provision of section 25-F of the Act. The impugned order of termination is void and illegal and so he is entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No. 1, submitted written statement, dated 17th August, 1988 stating therein that the reference is not maintainable as the respondent No. 1 is not an 'Industry' as defined in the Industrial Disputes Act. It was further pleaded that the workman was appointed on daily wages as Jeep Driver on his jeep bearing No. HRP 6666 on 27th March, 1986 for a period of 89 days as per D.C. rate and he worked with him till 23rd June, 1988. He was further re-appointed on the same terms and conditions with effect from 25th June, 1986 to 21st September, 1986, 23rd September, 1986 to 20th December, 1986 and 21st December, 1986 to 17th January, 1987. The workman then applied a fresh for being appointed as jeep driver and he was appointed on 16th September, 1987 daily wages basis and he worked up to 3rd December, 1987. His only jeep had broken down and as such the workman was not appointed after 3rd December, 1987. It was clarified that the workman had not worked during the period from 1st April, 1987 to 15th September, 1987. The workman is thus, not entitled to any relief.

4. The workman submitted rejoinder, dated 14th September, 1988, re-asserting the previous averments and denying the averments of the respondent No. 1.

5. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the termination of services of Shri Pal Singh is legal and justified ? If not, to what relief, is he entitled to ? (As per reference).
- (2) Whether the reference is not maintainable as alleged ?
- (3) Relief.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under:—

Issue No. 1:

8. MW-1 Sayad Ahmed the only witness examined by the respondents deposed that the workman had submitted application, Ex. M-1 for seeking appointment. He was appointed through letter Ex. M-2. He had joined service by submitting joining report Ex. M-3. He had submitted a fresh application, Ex. M-4 seeking appointment and he was appointed through letter Ex. M-5. Similarly the workman had submitted another application, Ex. M-6 and he was appointed through letter Ex. M-7. The service of the workman were terminated on 17th January, 1987 through letter Ex. M-8. The workman had served demand notice, Ex. M-10 but after some time he had withdrawn his notice. He further stated that the workman had also submitted application, Ex. M-11 seeking appointment as waterman and he was appointed as such through letter, Ex. M-13 and he had worked up to 31st March, 1987 on that post. Thereafter the workman had again submitted Ex. M-4 seeking appointment as driver and he was appointed through letter, Ex. M-16. In the end, he stated that the services of the workman were terminated lastly through letter Ex. M-17.

9. On the other hand, the workman deposed that he had been appointed as Jeep driver on 27th March, 1987. He was never issued any oral or written warning and his work had been satisfactory. His services were terminated on 3rd December, 1987 without any written order. He had been continuously working during the period from 27th March, 1986 to 3rd December, 1987. He further stated that he was not given any appointment letter at the time of his appointment. In the end he stated that he had not been paid any retrenchment compensation at the time of termination of his services.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the respondents that it stands established that the workman as appointed initially for a fixed period of three months on the basis of his application Ex. M-1. The workman admitted in his cross-examination that he had submitted applications Ex. M-3, M-4, M-6, M-11, M-14 and M-15. This position clearly establishes that the workman was appointed for the periods mentioned above each time for fixed period *bonafide* keeping in view the requirements. The workman himself admitted that he had been doing the job of waterman. He also admitted that he had submitted application Ex. M-11 for being appointed as waterman. This position clearly shows that the workman had worked as waterman during the period from 5th February, 1987 to 31st March, 1987. The fact that the workman had not been in the service of the respondent No. 1 during the period from 1st May, 1987 to 15th September, 1987 stands proved from the decision of the learned Additional District Judge, Faridabad, Ex. M-23. It is thus, clear that the workman had not worked continuously as driver with the respondent No. 1 during the period from 27th March, 1986 to 31st December, 1987 as alleged by him. Consequently, he is not entitled to any relief.

11. On the other hand, it has been submitted on behalf of the workman that it is admitted by the respondent No. 1 in the written statement itself that the workman had worked during the period, from 27th March, 1986 to 23rd June, 1986, for 89 days, 25th June, 1986 to 21st September, 1986 for 89 days, 23rd September, 1986 to 20th December, 1986 for 89 days and from 20th December, 1986 to 17th January, 1987 for 29 days. It is thus, clear that the workman had worked for a period of more than 240 days continuously with respondent No. 1 prior to the termination of his service on 17th January, 1987. It is not disputed that the workman was not paid retrenchment compensation, before termination of his services. It was held by the Hon'ble Supreme Court of India in the case between State Bank of India, *versus* N. Sundaramoney, 1976, LLJ 478 that whatever the reason, every termination spells out retrenchment. It was also held in this case that if the workman swims into harbour of Section 25-F. He can not be retrenched without payment of retrenchment compensation at the time as prescribed therein read with Section 25-B(2). It was held in the case of Kurukshetra Central Co-op. Bank Kurukshetra, *versus* State of Haryana, 1992 LLR 67 that repeated breaks in service for a few days amounts to unfair labour practice. Applying the ratio of these two cases on the facts of the instant case, it is clear that the termination of services of the workman by the respondent No. 1 is illegal and unjustified. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages.

12. To counter this position, it has been submitted on behalf of the respondent No. 1 that in fact respondent No. 1 himself was not competent to appoint a driver on regular basis. It was respondent No. 2 alone who was competent to appoint a driver on regular basis. It is clear from the perusal of office comments given on the application Ex. M-1 of the workman that respondent No. 2 had transferred Jai Dev driver appointed on regular basis and had not provided his substitute. In that situation the respondent No. 1 had appointed the present workman as a stop gap arrangement till a regular person was appointed by respondent No. 2. This position was made clear in the appointment letter Ex. M-2 issued to the workman. The workman had accepted this condition in his joining report Ex. M-3. It is further clear from the endorsement Ex. M-5 made on the application Ex. M-4 that the workman was again given appointment for another spell of 89 days as the respondent No. 2 had not appointed a regular driver. In similar circumstances, the workman was again appointed for the period from 21st December, 1986 to 17th January, 1987. It is also clear from the position indicated on the application Ex. M-6 of the workman that the service of the workman was not extended after 17th January, 1987 as the Jeep on which he was appointed as driver had become out of order and the department was not having funds to get the same repaired. There was also possibility no to have the funds upto 31st March, 1987. This position was clearly indicated in the letter, dated 17th January, 1987, Ex. M-8 through which the services of the workman were terminated. It is thus, clear that the workman was appointed as a stop gap arrangement. The breaks in his service were given *bonafide*. The case is thus, covered by the provision of section 2(oo) (bb) of the Act and the workman was not entitled to retrenchment compensation. Consequently, the termination of services of the workman is legal and valid.

13. There is merit in the submission made on behalf of the respondent No. 1. The law laid down in the case of State Bank of India, *versus* N. Sundaramoney, 1978 LLJ 478 referred to above does not hold the field. It was held by the Hon'ble Supreme Court of India in the case of Punjab Land Development Reclamation Corpn. Ltd., Chandigarh, *versus* Presiding Officer, Labour Court, 1990 LLR 410 that the term 'retrenchment' defined in Section 2(oo) of the Act covers termination by the employer of the services of a workman for any reason whatsoever except those expressly excluded in the section. Sub-section 2(oo) (bb) of the Act excludes from the ambit of the term retrenchment, the termination of the services of the workman as a result of the non-renewal of the contract of employment on its expiry or of such contract being terminated under stipulation in that behalf contained therein. It was recently held by our own Hon'ble High Court in the case between Balbir Singh, *versus* Kurukshetra Central Co-op. Bank Ltd., and another 1990 (I) LLJ 443 that clauses 2(oo) (bb) has to be so interpreted as to limit it to cases where the itself has been accomplished and agreement of hiring for a specific period was genuine. If the work continues the non-renewal of the contract has to be dubbed as *malafide*. In the instant case, it is clear from the position mentioned in the appointment letter that the workman was appointed on a vacancy which had

occured due to non-appointment of regular driver by respondent No. 2. It is also clear that the respondent No. 1 was not competent to appoint a driver on regular basis. The services of the workman were terminated on 17th January, 1987 when the jeep had become unserviceable and there were no funds to get it repaired. Keeping in view this position, it is held that the termination of services of the workman through order, dated 17th January, 1987 was legal and justified even if the workman had rendered service for a period of more than 240 days.

14. So far as the remaining period of service of the workman with effect from 18th January, 1987 to 3rd December, 1987 is concerned, it is observed that the workman admitted in his application, Ex. M-14 that he had worked as waterman during the period from 5th March, 1987 to 31st March, 1987. It stands established from copy of judgement dated 19th October, 1989 Ex. M-23 delivered by Additional Session Judge-I, Faridabad that the workman had not worked under respondent No. 1 during the period from 1st June, 1987 to 1st September 1987. The workman admitted that he had submitted application dated 16th September 1987, Ex. M-15 for his appointment and on that basis he was given appointment for a period of 240 days or till a regular driver was appointed by respondent No. 2. It appears from the letter, dated 3rd December, 1987, Ex. M-17 that the services of the workman were terminated in the circumstances mentioned above. That being so, the workman can not claim that he had been working as driver with respondent No. 1 during the period from 27th March, 1986 to 3rd December, 1986 continuously as stated in the claim statement.

15. For the reasons recorded above, it is held that the termination of services of the workman is legal and valid. consequently, the workman is not entitled to any relief.

Issue No. 2:

16. The authorised representative of the respondent did not press for this issue during the course of arguments. Issue No. 2 is decided against the respondents and in favour of the workman.

Relief:

17. In view of my findings on Issue No. 1 above, it is held that the termination of services of the workman is legal and justified. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

The 6th September, 1994.

Endst. No. 2859, dated 13th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6 Lab./595.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to published the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court II, Faridabad in respect of the dispute between the workman and the management of M/s T. C. Haryana, Chandigarh versus Umed Singh :—

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT
FARIDABAD

Reference No. 36/93

Between

THE MANAGEMENT OF M/S TRANSPORT COMMISSIONER, HARYANA,
CHANDIGARH

2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD.

Versus

THE WORKMAN NAMELY SHRI UMED SINGH, S/O CHANDER BHAN C/O SHRI
K. L. SHARMA, ORGANISATIONING XECRETARY, HARYANA INTAK G-15, PRESS
COLONY, N. I. T., FARIDABAD.

Present:—

Shri K. L. Sharma, Authorised representative for the workman.

Shri R. P. Dagar, ADA, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication,—vide Haryana Government Endorsement No. 56801-807 dated 16th December, 1988:—

Whether the services of Shri Umed Singh were terminated or he had left the job of his own having remained absent? The relief, to which is he entitled as a result thereof?

2. The case of the workman is that he was employed as Helper by respondent No.2 on 25th October, 1983 at Rs. 410 per month. He has been discharging his duties to his entire satisfaction of his superiors without any sort complaint. On 9th January, 1987 he suddenly fell ill in the depot and was taken to B. K. Hospital, Faridabad in the Haryana Roadways bus by Om Parkash Assistant Fitter. After treatment he left for his native place as there was no one to look after him at Faridabad. He had sent application for the grant of leave for the period of 10th January, 1987 to 31st March, 1987 along with medical certificate through Basant Lal an employee of Haryana Roadways Depot, Rawari and the same was delivered in the office of the respondent No. 2. He reported for duty on 1st April, 1987 along with fitness certificate but he was not allowed to resume duty. On his repeated requests he was told that his services had been terminated with effect from 1st April, 1987. The termination of his services is illegal against the provisions of section 25-F of the Act. He is thus, entitled to be reinstated into service with full back wages and continuity in service.

3. The respondent No. 2 submitted written statement dated 17th August, 1989 stating therein that the workman was appointed as Helper on 25th October, 1983. It was admitted that the workman had suddenly fallen ill on 9th January, 1987 and was referred to B. K. Hospital, Faridabad. It was admitted that the workman had been applying for grant of leave upto 2nd March 1987 and not thereafter. It was further mentioned that the contract of service with the workman had ended on 31st March, 1987 and it was not renewed in the month of April 87 as he himself had voluntarily retired from service by not submitting any application after 2nd March, 1987. The workman is thus, not entitled to relief claimed.

4. The workman submitted rejoinder dated 15th September, 1989 re-asserting the previous averments and denying the averments of the respondent No. 2.

5. On the pleadings of the parties, the following issue was framed:—

(1) Whether the services of Shri Umed Singh were terminated or he had left the job of his having remained absent? The relief, to which is he entitled as a result thereof?
(As per reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

8. The respondent No. 2 has examined only one witness Babu Lal Clerk and he deposed that the workman was appointed as Helper on daily wages for the period of 25th October 1983 to 31st October, 1983 through letter dated 8th November, 1983 Ex. M-1. His tenure of service was extended thereafter from time to time. Lastly he was appointed through letter dated 10th March, 1987 Ex. M-2 for the period from 1st March, 1987 to 31st March, 1987. The workman had been absent from duty continuously with effect from 3rd March, 1987 and in that situation no further order was issued for the appointment of the workman.

9. On the other hand, the workman deposed the facts mentioned above in his claim statement

10. On the basis of aforesaid evidence, it has been submitted on behalf of the respondents that it is clear from the appointment letters Ex. M-1 and Ex. M-2 that the workman was appointed for specific period every time keeping in view the exigencies of service. Lastly the workman was appointed for a period of one month from 1st March, 1983 to 31st March, 1983. The service of the workman had come to an end by efflux of time as 31st March, 1983 as per appointment letter. His case falls under the provision of sub-section (2)(oo) (bb) of the Act. Consequently, the workman was not entitled to any retrenchment compensation. The services of the workman were never terminated by the respondent. Consequently, the workman is not entitled to any relief.

11. On the other hand, it has been submitted on behalf of the workman that the respondent No. 2 has placed on file only two appointments letters one dated 8th November, 1983 Ex. M-1

and the other dated 10th March, 1987 Ex. M-2. The respondent No. 1 has not placed on record the other appointment letters through which the workman was appointed from time to time. MW-1 Babu Lal clearly admitted in his cross examination that the workman had been continuously in service of the respondent No. 2 with effect from 25th October, 1983 to 3rd March, 1987 without any break. He admitted in his cross-examination that the workman fallen ill on 9th January, 1987 and was taken to B. K. Hospital. He further admitted that the workman submitted application for the grant of leave for the period from 10th January, 1987 to 2nd March, 1987. It is thus, clear that the workman had rendered service for continuous period of more than 240 days with the respondent No. 2. The services of the workman could not be terminated without payment or retrenchment compensation. Thus, the impugned action of the respondent No. 2 terminating the services of the workman is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service and full back wages. To support this plea a reference has been made to the case between *State Bank of India versus N. Sunderramoney* 1976 (II) LLJ 478 in which it was held that if the workman swims into the harbour of section 25-F, he can not be retrenched without payment at the time of retrenchment compensation as prescribed therein read with section 25-B.

12. It is clear from the position discussed above that the workman had rendered service for a continuous period of more than 240 days prior to his appointment for a fixed period of one month from 1st March, 1987 to 31st March, 1987 through letter dated 10th March, 1987 Ex. M-2. The service of the workman thus, could not be terminated without making payment or retrenchment compensation. Admittedly it was not paid. The termination of service of the workman is thus, illegal and unjustified. The plea taken by the respondent No. 2 in his written statement is that the services of the workman were not extended further as he had been absent without any intimation with effect from 3rd March 1987 can not be accepted. In this regard, the Hon'ble Supreme Court of India held in the case between *D. K. Yadav versus JMA Industries Limited*, 1993 FLR 111 that before taking any action putting an end to the tenure of employees/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. The witness examined by the respondent No. 2 admitted the receipt of an application of the workman for the grant of leave for the period from 10th January, 1987 to 2nd March, 1987. In this situation it was incumbent upon the respondent No. 1 to provide an opportunity to the workman to explain the reason as to why he had been absent with effect from 3rd March, 1987 without any intimation. This was not done. The impugned action of the respondent is thus, against the principles of natural justice.

13. The matter has also been examined as to whether the present case falls under section 2(oo)(bb) of the Act which relates to non-renewal of contract of service. In the instant case the respondents have not placed on record any evidence to show that the work for which the workman was appointed for a period had ceased to exist. The respondents No. 2 rather took the plea in the written statement that the fixed period of services of the workman was not extended on account of his absence from duty. That being so, it is held that the present case is not covered by the provisions of section 2(oo) (bb) of the Act.

14. For the reasons recorded above, it is held that the respondents had illegally terminated the services of the workman without any justification. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages. The award is passed accordingly.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

The 8th September, 1994.

Endst. No. 2860, dated 13th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.